Supreme Court, U.S.
FILED
95 1530 FEB 28 1996
OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

ANNE M. GLAVEY,

Petitioner,

VS.

THE DIME SAVINGS BANK OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE NEW YORK STATE COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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29 pp

QUESTION PRESENTED

Does the New York State law which allows jurisdiction of the Court to be predicated upon the service of process on a doorman not authorized to accept service at the non-residence address of the party violate the due process rights guaranteed to citizens of the United States under the Fourteenth Amendment to the United States Constitution.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	iii
Table of Authorities	v
Opinions Below	2
Jurisdiction	2
Constitutional and Statutory Provisions Involved	2
Statement of the Case	2
Reasons for Granting the Writ	4
Conclusion	11

INDEX TO APPENDICES

Appendix A: Opinion of the New York State Court of Appeals [unpublished]	A-1
Appendix B: Opinion of the Appellate Division, Second Department, *Dime Savings Bank of New York* v. *Glavey,* 214 AD2d 419	A-2
Appendix C: Orders of the Supreme Court of the State of New York, Special Term [unpublished]	A-6
Appendix D: Amendment XIV to the United States Constitution	A-11

TABLE OF AUTHORITIES

I. Federal Cases **Page**

Armstrong v. *Manzo*, 380 US 545 (1965)..... 9

Flagg Bros., Inc. v. *Brooks*, 436 US 149 (1978)..... 9

Greene v. *Lindsey*, 456 US 444 (1982)..... 4

Mennonite Board of Missions v. *Adams*, 462 US 791 4

Milliken v. *Myer*, 311 US 457, rehearing denied, 312 US 712 8

Mullane v. *Central Hanover Bank & Trust Co.*, 339 US 306 (1950)..... 4

Peralta v. *Heights Medical Center*, 485 US 80 (1988)..... 8

II. New York State Cases

Dupont, Glore, Forgan v. *Chen*, 41 NY2d 794 (1977)..... 5, 11

Roldan v. *Thorpe*, 117 AD2d 790..... 6

III. Treatises

62 American Juris.2d, Process, Section 3 8

No.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Anne M. Glavey, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals of the State of New York which denied leave to appeal a decision of the Supreme Court of the State of New York, Appellate Division, First Department, which upheld the violation of the due process rights of the Petitioner by affirming a trial term decision that substituted service of process on a doorman was sufficient to give trial term jurisdiction to proceed.

OPINIONS BELOW

The unpublished opinion of the New York State Court of Appeals appears as Appendix A to this Petition. The opinion of the Appellate Division, Second Department, as reported at 214 AD2d 419 is Appendix B. The unpublished orders of the Supreme Court of the State of New York, Special Term, granting foreclosure and denying reargument of the motion to foreclose are attached hereto as Appendix C.

JURISDICTION

The opinion of the Court of Appeals in this matter was filed on November 30, 1995. This appeal is made pursuant to Supreme Court rule within ninety (90) days of the date of such decision. This Court's jurisdiction is invoked under Title 28 USC Section 1257(a).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

Amendment Fourteen to the United States Constitution is set forth in Appendix D.

STATEMENT OF THE CASE

It is fundamental law that no one can be deprived of life, liberty or property without due process of law.

In this case, a condominium apartment belonging to the Petitioner Anne M. Glavey was taken from her by The Dime Savings Bank of New York — who held the mortgage to the property — on the ground that the Petitioner was allegedly late with several payments on the mortgage.

The bank does not deny — nor could it — that the late payments were tendered in full with appropriate interest even before the bank began its action to foreclose.

Service in this matter was not made upon the Petitioner personally, but rather on a doorman at the condominium apartment, one Fathi Healim.

Thereafter, the process server recited that he sent a copy of the Summons and the Notice of Pendency by mail to the general address of the Petitioner, without addressing the Summons to the Petitioner's apartment by proper number.

After the time for answering the Summons and Complaint had expired, Petitioner — an airline employee — learned of the action and filed an answer, while the Board of Managers of the condominium filed a cross-claim against Petitioner.

Thereafter and one June 10, 1992, attorneys for The Dime Savings Bank moved for summary judgment, which was granted.

The case was appealed to the Appellate Division of the New York State Supreme Court, First Department, on the grounds that the referee who made the decision acted improperly, and on the grounds that substituted service was improper.

In its decision, the First Department held "Under the circumstances, substituted service (CPLR 308(2)) in this foreclosure action was properly made upon the doorman of the premises covered by the mortgage, since defendant represented her address to be said premises, and since there is insufficient evidence to demonstrate the plaintiff knew that defendant resides elsewhere."

In actual fact, Petitioner was a resident of New Jersey, and the doorman was not authorized to receive service of process for the Petitioner at the apartment.

More of this, the process server — by his affidavit — never attempted to gain access to the apartment, but merely left the Summons and Complaint with the doorman without making further inquiry as to whether he could get to the apartment itself.

Your Petitioner promptly appealed the adverse determination of the First Department to the New York State Court of Appeals, asking for leave to appeal, which leave was denied by the Court on November 30, 1995.

The New York State Court of Appeals, in affirming the Appellate Division, First Department, acted against its own standard of review, and violated the established precedents of this Honorable Court and the Fourteenth Amendment of the United States Constitution.

REASONS FOR GRANTING THE WRIT

In *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 at 314, 94 L.Ed. 865, 70 S.Ct. 652 (1950), this Court recognized that prior to an action which will affect an interest in life, liberty or property protected by the due process clause of the Fourteenth Amendment, a state must provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

In that action, this Court, invoking the "elementary and fundamental requirement of due process" held that published notice of an action to settle the accounts of a common trust fund was not sufficient to inform beneficiaries of the trust whose names and addresses were known.

In subsequent cases, this Honorable Court has adhered unwaveringly to the principle announced in *Mullane.*

For example, in *Greene* v. *Lindsey,* 456 U.S. 444, 72 L.Ed.2d 249, 102 S.Ct. 1874 (1982), this Court held that posting a summons on the door of a tenant's apartment was an inadequate means of providing notice of forceable entry and detainer actions in multiple residences.

It is undisputed that a party's ability to take steps to safeguard its interests does not relieve the state of its constitutional obligation. This is the more so where a party is inexperienced in legal matters (*Mennonite Board of Missions* v. *Adams,* 462 US 791, 77 L.Ed.2d 180, 103 S.Ct. 2706).

In *Mennonite,* this Honorable Court overturned a tax sale on the grounds that a mortgagee did not receive notice of the tax sale.

In dissent, the Chief Justice and Justices O'Connor and Powell wrote that:

> The key focus [in due process matters] is the reasonableness of the means chosen by the state [citation omitted]. Whether a particular method of notice is reasonable depends on the outcome of the balance between the interest of the state and the individual interest sought to be protected by the Fourteenth Amendment [citation omitted]. Of course, it is not our responsibility to prescribe the form of service that the state should adopt [citation omitted]. It is the primary responsibility of the state to strike this balance, and we will upset this process only when the state strikes the balance in an irrational manner. (*Mennonite Board* at 462 US 801).

In fact, New York has set a balance which does not protect the interest of non-resident property owners, such as your Petitioner.

Due process is violated when substituted service can be made on a doorman who has no relationship whatsoever to the property owner who is a non-resident.

A similar case has twice been considered by the Courts in New York.

In *Dupont, Glore, Forgan* v. *Chen* (41 NY2d 794 [NYS Court of Appeals 1977]), New York State's highest Court concluded that "In at least some circumstances, an apartment house doorman may be a person of suitable age and discretion at the actual dwelling place of a tenant in the apartment house to whom a Summons may properly be delivered for the purposes of alternative service under CPLR 308 (subd. 2)."

In that case, the Sheriff of New York County first made several attempts at process service, first going to the actual door of the defendant's apartment, and attempting to gain access, and twice returning. Here it is notable that the process server made — by his own affidavit no multiple attempts to

serve process at the site but merely served the doorman on what was apparently his first attempt at service.

In *Dupont,* after making several attempts at service, "the deputy handed the doorman two copies of the Summons and Complaint and on returning to his office also mailed copies to each defendant."

The Court of Appeals determined that "at least under some circumstances" a doorman can be a person of suitable age and discretion where "the doorman had functioned as a responsible communicator; he had informed the deputy sheriff that defendants had received the latter's message."

The Court went on to note [at page 798]:

> While it would probably be sufficient for purposes of the statute if the defendant were a tenant in an apartment house in which, as a matter of practice, the doorman was under instructions not to admit callers without the consent of the tenants, in this case the inference was available to the referee that having been admitted on the 24th and 26th, when the deputy sheriff was barred by the doorman on the 30th, it was at the specific direction of others.

That inference is not here present, nor is there any record created by the plaintiff which would say — under the settled decisions of this Court — that Anne Glavey's due process rights were respected by this method of service.

In *Roldan* v. *Thorpe,* 117 AD2d 790 (Case 22) [1986], the Appellate Division, Second Department, also upheld substituted service on a doorman, arguing that a landlord in a small apartment building qualifies as a person of suitable age and discretion within the contemplation of CPLR 308(2).

Well might that argument be made, where the apartment is the actual dwelling place of the individual involved, and the landlord and the tenant have a business relationship.

That same argument cannot be made where the defendant is a non-resident, and the doorman has no business relationship with the tenant.

In *Greene* v. *Lindsey, supra,* this Honorable Court voided a Kentucky statute which provided that in forceable entry and detainer actions service of process could be made by posting a Summons on the door of a tenant's apartment if the tenant or members of their family over 16 years of age were not on the premises to receive it.

In delivering the opinion of the Court, Justice Brennan stated:

> The fundamental requisite of due process of law is the opportunity to be heard [citation omitted], and the right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest [citation omitted]. Personal service guarantees actual notice of the pendency of a legal action; it thus presents the ideal circumstance under which to commence legal proceedings against a person, and has traditionally been deemed necessary in actions styled in personam [citations omitted].
>
> Nevertheless, certain less rigorous notice procedures have enjoyed substantial acceptance throughout our legal history; in light of this history and the practical obstacles to providing personal service in every instance, we have allowed judicial proceedings to be prosecuted in some situations on the basis of procedures that do not carry with them the same certainty of actual notice that inheres in personal service. But we have also clearly recognized that the due process clause does describe a constitutional minimum: 'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is *notice reasonably calculated, under all the circumstances, to apprise*

> *interested parties of the pendency of the action* and afford them an opportunity to present their objections.' [emphasis in original]

This is the standard against which the decision of the New York State Court of Appeals and the Appellate Division of that State Supreme Court must be measured.

The question is whether or not service on a doorman provides "a reliable means of acquainting interested parties of the fact that their rights are before the Courts" [*Greene* at 454].

Here, service of process on a doorman is about equivalent to service of process on a stranger. The doorman had no duty whatsoever to make sure that the process was passed on to its intended recipient. Thus, this action falls into the class of cases which clearly state that service on an unrelated individual who has no legal duty to the defendant is not good service under law.

Service of process means the delivery or other communication of a Summons to a party against whom a proceeding is brought with the effect of legally charging the party with notice of receiving it. Under the due process clause of the federal Constitution's Fourteenth Amendment — which guarantees the right to notice and an opportunity to be heard and to defend oneself before a competent tribunal — a state court, as a general rule, has no jurisdiction to proceed to judgment against a party until the party is served with process that gives adequate notification of the pending proceedings (62 American Juris.2d, Process, Section 3).

In *Peralta* v. *Heights Medical Center,* 485 US 80, 99 L.Ed.2d 75, 108 S.Ct. 896 (1988). this Court held that a default judgment wasn't firm where the judgment was entered without timely service of process and with substantial adverse consequences to the party in default.

In *Milliken* v. *Myer,* 311 US 457, rehearing denied 312 US 712, the Court ruled that the adequacy of substituted service — at least under due process standards — is dependent on whether the form of service provided and employed is

reasonably calculated to give the interested party actual notice of the proceedings and an opportunity to be heard. Here, even under New York's somewhat amorphous standard, no argument can be made that service on an unrelated doorman gives that notice.

As the Chief Justice has written:

> . . . Property interest is not a monolithic abstract concept hovering in the legal stratosphere. It is a bundle of rights in personalty, the meets and bounds of which are determined the decisional and statutory law of the State of New York. The validity of the property interest in these possessions which respondents previously acquired from some other private person depends on New York law, and the manner in which that same property interest in these same possessions may be lost or transferred to still another private person likewise depends on New York law (*Flagg Bros. Inc.* v. *Brooks,* 436 US 149 at 160 [Note 10] (1978).

However, the law of New York is circumscribed by the Fourteenth Amendment to the United States Constitution, and the due process clause. A fundamental requirement of due process is the opportunity to be heard. It is an opportunity which must be granted at a meaningful time and in a meaningful manner (*Armstrong* v. *Manzo,* 380 US 545 at 552 (1965)).

Where, as here, substituted service was effectively no service, the Supreme Court of the State of New York and its Appellate Division deprived Petitioner of rights protected to her by the Constitution of the United States.

Where, as here, Petitioner's property has been foreclosed in a proceeding based upon defective service of process, Petitioner's rights under the due process clause of the United States Constitution have clearly been violated.

Even the New York courts concede that service on a doorman is not — "under all circumstances" — proper service

herein. Under these circumstances, where the doorman has absolutely no relationship to the Petitioner and no effort was made to serve the Petitioner personally, due process mandates that this judgment be reversed.

This Court should grant certiorari to explicitly rule that service on a doorman — without more — does not comply with due process under the Fourteenth Amendment, and further to correct the decision of the New York State Court of Appeals herein, which has so far departed from the accepted and usual course of its decisional law in this matter — and sanctioned such a departure by a lower court — as to call for an exercise of this Court's power of supervision.

CONCLUSION

For the reasons set forth above, a Writ of Certiorari should issue to review the judgment and order of the New York State Court of Appeals in this matter.

If this Court elects not to address the issues presented in this Petition at the present time, it is requested that the matter be remanded to the New York State Court of Appeals for a determination as to whether or not the Petitioner's due process rights were violated under the doctrine of *Dupont, Glore, Forgan* v. *Chen, supra.*

Dated: Tappan, New York
February 27, 1996

Respectfully submitted,

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State of New York

Court of Appeals

Donald M. Sheraw
Clerk of the Court

Clerk's Office
Albany, New York 12207

DECISION November 30, 1995

1-10 Mo. No. 1259

The Dime Savings Bank of New York,

Respondent,

v.

Anne M. Glavey,

Appellant,

The Board of Managers of the Hardenbrook House Condominium,

Defendant.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PART 19

PRESENT: Hon. Edward H. Lehner
Justice.

THE DIME SAVINGS BANK OF NEW YORK,	:	INDEX NUMBER 20452/91
Plaintiff,	:	MOTION DATE 2-4-94
— against —	:	MOTION SEQ. NO. 005
ANNE M. GLAVEY, THE BOARD OF MANAGERS OF THE HARDENBROOK HOUSE CONDOMINIUM,	:	TRIAL CAL. NO. 9
Defendants.	:	

The following papers numbered 1 to __ rend on this motion to _____.

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause - Affidavits - Exhibits _____	
Answering Affidavits - Exhibits _____	
Replying Affidavits _____	

Upon the foregoing papers it is ordered that this motion by defendant Glavey to reargue the decision of former Justice Sherman confirming the report of the referee, and to renew the plaintiff's motion for summary judgment granted by said justice, are both treated as a motion to reargue and, as such, are denied. Movant has failed to present any evidence that was not before Justice Sherman on the motion to confirm, or which with reasonable diligence could have been so submitted.

A motion to reargue the summary judgment was previously made before Justice Sherman and denied by him. See in general, *Konecky v. Horowitz*, 177 AD2d 685; *Mangine v. Keller*, 182 AD2d 476; *Haassmann v. Wolf*, 187 AD2d 371; *Foley v. Roche*, 68 AD2d 558.

Dated Feb 09 1994

Sullivan, J.P., Rosenberger, Wallach, Asch, Williams, JJ.

54541 The Dime Savings Bank of New York, Plaintiff-Respondent, M. Finkel

-against-

Anne M. Glavey, Defendant-Appellant, S. Latzman

-and-

The Board of Managers of the Hardenbrook House Condominium, Defendant.

Order and judgment (one paper), Supreme Court, New York County (Edward Lehner, J.), entered March 8, 1994, which confirmed the Referee's report, granted plaintiff a judgment of foreclosure and sale, and denied defendant's cross-motion to disqualify and remove the Referee, unanimously affirmed, without costs.

Defendant failed timely to make her monthly mortgage payments and was in arrears for several months when plaintiff notified her of the default and plaintiff's election to accelerate all payments pursuant to the mortgage agreement. Any tender of monthly mortgage payments in less than the full amount then due attempted by defendant after acceleration and after the foreclosure action was initiated was rightfully rejected by plaintiff (*See, The Dime Sav. Bank v Dooley*, 84 AD2d 804).

Under the circumstances, substituted service (CPLR 308[2]) in this foreclosure action was properly made upon the doorman of the premises covered by the mortgage, since defendant represented her address to be said premises and since there is insufficient evidence to demonstrate that plaintiff knew that defendant resided elsewhere.

Defendant waived her claim that the referee was biased since she did not move the court for such relief until weeks

after the hearing occurred and only after plaintiff moved to have the referee's report confirmed and for entry of a judgment of foreclosure and sale. (*Fisher v Fisher*, 223 App Div 19, 21 *affd.* 250 NY 313).

We have considered defendant's other claims and find them to be meritless.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 18, 1995

Catherine O'Hagau Wolfe
CLERK

Order and Judgment of Foreclosure Appealed From.....6-13

At IAS Part 19 of the Supreme Court of the State of New York County of New York, at the Supreme Court Building, 60 Centre Street, New York, New York 10007, on the ____ day of _____ 1994.

FEB 09 1994

PRESENT:

Honorable Edward H. Lehman, Justice.

THE DIME SAVINGS BANK OF NEW YORK, FSB,	:	Index No. 20452/91
Plaintiff,	:	ORDER AND JUDGMENT OF FORECLOSURE AND SALE
– against –	:	
ANNE M. GLAVEY, THE BOARD OF MANAGERS OF THE HARDENBROOK HOUSE CONDOMINIUM,	:	
Defendants.	:	

On the summons, verified complaint, and notice of pendency of action all now duly filed in this action, and all proceedings thereon; and on the affidavits of service and notices of appearance now on file in this action, showing that each and every defendant herein has been properly served with the summons and verified complaint in this action, or has voluntarily appeared herein by their respective attorneys; and more than twenty days have elapsed since service upon all defendants was completed and since said defendants appeared, as aforesaid, defendants ANNE M. GLAVEY and THE BOARD OF MANAGERS OF THE HARDENBROOK CONDOMINIUM

(the "Board") answered the verified complaint, and that no other defendant has served an answer to the verified complaint and no defendant has moved with respect thereto, nor has their time been extended, and that due notice of the pendency of this action was duly filed in the office of the Clerk of the County of New York on August 28, 1991, on or after the time of filing the verified complaint and an order of summary judgment granting the relief demanded in the verified complaint and appointing a referee having been made by this Court on April 21, 1993, directing *inter alia*, the referee to compute the amount due to plaintiff upon the Mortgage, set forth in the verified complaint, and to examine and report whether or not the mortgaged premises can be sold in parcels, and a Referee's hearing having come on to be heard on August 4, 1993; upon the testimony and appearance of James Sherman of The Dime Savings Bank of New York, FSB, plaintiff herein, and after due deliberation thereon, and on reading and filing the report of Sylvan R. Novick, Esq., the referee named in the order, by which report, dated August 4, 1993, it appears that the sum of $159,150.28 was due thereon at the date of the report and that the mortgaged premises can be sold in one parcel without material injury to the parties interested, and that the whole amount secured by said Mortgage has become due; and upon Plaintiff's motion to confirm the Referee's Report and for Judgment of Foreclosure and Sale and upon Reading and Filing the Notice of Motion dated September 13, 1993 - Affidavit of Melanie Finkel sworn to September 13, 1993 and exhibits thereto in support. Defendant Glavey's Notice of Cross Motion to disqualify and remove Sylvan R. Novick as Referee dated October 1, 1993, the affirmation of Stephen Lotzman dated September 30, 1993 and exhibits thereto in support - the Affirmation of Stephen Lotzman dated October 4, 1993 and exhibits thereto in opposition to the motion - the Affirmation of Melanie Finkel dated October 5, 1993 and exhibit thereto in Reply and upon the Court's decision dated November 26, 1993 it is ordered that the Motion is granted, the Cross Motion is denied and the Report of the Referee is Confirmed and it is further

ORDERED AND ADJUDGED that the mortgaged premises described in the verified complaint in this action, as hereinafter set forth, be sold at public auction in one parcel by Sylvan R. Novick, Esq. who is hereby appointed referee for that purpose. That the referee give public notice of the time and place of such sale, according to law and rules and practice of this Court, by publishing the notice of sale in the New York Law Journal; that plaintiff or any other party to this action may become the purchaser or purchasers at such sale; that the referee execute to the purchaser or purchasers on such sale a deed of the premises sold; that the referee on receiving the proceeds of sale forthwith pay therefrom the taxes, assessments and water rents which are or may become liens on the premises at the time of sale; that the referee shall then deposit the balance of such proceeds of sale in his own name as referee in Bank Leumi New York Trust Co. and shall thereafter make the following payments, and his checks drawn for that purpose shall be paid by the said depository;

FIRST: The statutory fees of said referee, not to exceed TWO HUNDRED DOLLARS.

SECOND: Expenses of sale and advertising expenses as shown on the bills presented and certified by the referee to be correct.

THIRD: The referee shall also pay to plaintiff or its attorneys, the sum of ONE HUNDRED FIFTY NINE THOUSAND ONE HUNDRED FIFTY and 28/100 DOLLARS ($159,150.28) the amount so reported due as aforesaid and legal interest thereon from the date of the report plus any amount advanced and duly documented by plaintiff for real estate taxes for the premises being foreclosed since the date of the Referee's report or so much thereof as the purchase money of the mortgaged premises will pay same; take a receipt therefor, and file it with his report of sale.

FOURTH: If such referee intends to apply for a further allowance for his fees, he may leave upon deposit such amount as will cover such additional allowance to await the further order of this Court thereon after application duly made.

FIFTH: That in case plaintiff purchases the mortgaged premises at the sale, or in the event that the rights of the purchaser at the sale and the terms of sale under this judgment shall be assigned to and acquired by plaintiff, and a valid assignment thereof filed with the referee, the referee shall not require plaintiff to pay in cash the entire amount bid at the sale, but shall execute and deliver to plaintiff a deed or deeds of the premises sold upon the payment of the referee of the amounts specified above in items marked "FIRST" and "SECOND" and the amounts of the aforesaid taxes, assessments and water rents, and interest or penalties thereon; or in lieu of the payment of the last mentioned amounts upon filing with the referee receipts of the proper municipal authorities showing the payment thereof. That the balance of the amount bid, after deducting therefrom the aforesaid amounts paid by plaintiff for referee's fees, expenses of sale, and taxes, assessments and water rents, shall be allowed to plaintiff and applied by the referee upon the amounts due to plaintiff as specified above in the item marked "THIRD"; that if after so applying the balance of the amount bid, there shall be a surplus over and above the amounts due to plaintiff, plaintiff shall pay to the referee, upon delivery to it of the referee's deed, the amount of such surplus. That the referee on receiving the several amounts from plaintiff shall forthwith pay therefrom the taxes, assessments, water rents and interest or penalties thereon, unless the same have already been paid, and shall then deposit the balance in the depository as hereinafter directed.

SIXTH: That the referee take the receipt of plaintiff or its attorneys for the amounts paid as hereinabove directed in item marked "THIRD," and file it with his Report of Sale; that he deposit the surplus money, if any, with the Clerk of the Court within five days after the same shall be received and ascertainable, to the credit of this action, to be withdrawn only on an order signed by a Justice of the Court; that the referee make his report of such sale and file it with the Clerk of the County of New York with all convenient speed, that if the proceeds of the sale be insufficient to pay the amount so reported due to plaintiff, with the expenses of the sale, interest,

costs and allowance, as aforesaid, the referee shall specify the amount of such deficiency in his Report of Sale; and that the defendant ANNE M. GLAVEY pay to plaintiff the amount of any deficiency which may be fixed, determined and awarded by the Court on a subsequent application herein, and that the plaintiff have execution therefor; and that the purchaser or purchasers at such sale be let into possession on production of the referee's deed or deeds, and it is further

ORDERED, ADJUDGED AND DECREED, that each and all of the defendants in this action and all persons claiming through or under them, or any or either of them, after the filing of the notice of pendency of this action, be, and they are hereby forever barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in the said mortgaged premises and each and every party thereof.

The following is a description of said mortgaged premises to be sold:

See Schedule "A" annexed.

SUBJECT to zoning restrictions and ordinances adopted by any municipal or other governmental authority, and any violations thereof; subject to any state of facts that an accurate survey would show; subject to covenants and restrictions, if any, insofar as they are now in force, contained in former deeds of record; subject to violations, if any, noted in any Federal, state or City agency having authority over the premises; and subject to the right of redemption of any municipal or governmental authority, if any.

ENTER

FILED
MAR 18, (1994)
COUNTY CLERK'S
OFFICE
NEW YORK

/s/
J.S.C.

/s/ Norman Goodman
CLERK

APPENDIX D

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sections 2, 3 and 4 are omitted.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

FILED
APR 24 1996
CLERK

No. 95-1530

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

ANNE M. GLAVEY,

Petitioner,

—against—

THE DIME SAVINGS BANK OF NEW YORK, FSB,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE NEW YORK STATE COURT OF APPEALS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Were the requirements of due process under the Fourteenth Amendment satisfied when the New York State Court of Appeals affirmed the decision of the New York State Appellate Division, First Department which held that Petitioner was properly served with the summons and verified complaint when personal service was made on Petitioner by serving her doorman at her self-proclaimed residence in New York and additional copies mailed to her at that address, and Petitioner had actual notice of the action and actively litigated and participated therein.

RULE 29.1 STATEMENT

Respondent NP Funding II L.P. is a Delaware limited partnership. The general partner of NP Funding II L.P. is N.P. Funding II Inc., a Delaware corporation, and the sole limited partner is CS First Boston Mortgage Capital Corp. NP Funding II L.P. has no parent company, nor any wholly owned subsidiaries.

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED i

RULE 29.1 LISTING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

STATEMENT OF THE CASE 1

A. The Commencement of the Underlying Action 2

B. Petitioner's Extensive Participation In the Action 3

1. Petitioner's Application to Extend her Time to Answer for Ninety Days 3

2. The Trial Court's Award of Summary Judgment in Favor of Respondent 4

3. The Referee's Hearing 4

4. Respondent's Motion to Confirm the Referee's Report and For a Foreclosure Judgment 4

5. Petitioner's Appeal of the Trial Court's Orders 6

SUMMARY OF ARGUMENT 7

PAGE

ARGUMENT

I. The Court of Appeals' Decision is Consistent with the Due Process Requirements of the Fourteenth Amendment 8

CONCLUSION 12

APPENDIX 13

TABLE OF AUTHORITIES

Cases PAGE

Armstrong v. Manzo, 380 U.S. 545 (1965) 11

Bossuk v. Steinberg, 58 N.Y.2d 916, 460 N.Y.S.2d 509 (1983) 9

Braun v. St. Vincent's Hospital, 57 N.Y.2d 909, 456 N.Y.S.2d 763 (1982) 9

Dime Sav. Bank of New York v. Glavey, 214 A.D.2d 419, 625, N.Y.S.2d 181 (1st Dept. 1995) 6

F.I. Dupont, Glore Forgan & Co. v. Chen, 41 N.Y.2d 794, 396 N.Y.S.2d 343 (1977) 9

Greene v. Lindsey, 456 U.S. 444 (1982) 10

Mennonite Board of Missions v. Adams, 462 U.S. 791 (1983) 9

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) 9

Nowell v. Nowell, 384 F.2d 951 (5th Cir. 1967), *cert. denied*, 390 U.S. 956 (1968) 10

Peralta v. Heights Medical Ctr., Inc., 485 U.S. 80 (1988) 11

Smith v. Kincaid, 249 F.2d 243 (6th Cir. 1957) 9

Tulsa Professional Collection Services v. Pope, 485 U.S. 478 (1988) 10

Statute:

New York Civil Practice Law and Rules section 308(2) 3, 6

STATEMENT OF THE CASE

In this mortgage foreclosure action, petitioner, Anne M. Glavey ("Petitioner"), requests a writ of certiorari to the Court of Appeals of the State of New York which denied Petitioner's motion for leave to appeal to that Court from the decision and order of the New York State Appellate Division, First Department, which unanimously affirmed the order and judgment of the trial court and upheld that court's findings that, among other things, Petitioner was properly served with the summons and verified complaint and had appropriate notice of the underlying action where personal service was made on her doorman at her last known residence in New York and copies of these documents were mailed to Petitioner at that address.

Petitioner argues that this decision was somehow a denial of her due process rights because this method of service could not give the trial court jurisdiction over her. In making her argument, Petitioner never denies that she had notice of the underlying proceeding or an opportunity to present her defenses to it, but instead claims that at the time she was served with notice, she was a nonresident of New York, her doorman could not accept service for her and the process server should have attempted to serve her personally. Petitioner's argument ignores the fact that: (i) she was served with the summons and verified complaint at the address—in New York—which she represented to Respondent to be her residence and a mailing of those documents was made to that address which she has never denied receiving; (ii) Respondent had no way of knowing that she did not reside at the Premises; (iii) the trial court granted Petitioner's motion to extend her time to answer the verified complaint and she interposed an answer to the verified complaint and asserted defenses to it; and (iv) Petitioner actively participated in the underlying action from its commencement to the entry of an order and judgment of foreclosure and sale and throughout her appeal.

Significantly, although she protests that her Fourteenth Amendment Due Process rights have been violated herein, Petitioner admits that she "learned" of the action when it was commenced, and never denies that she received copies of the summons and verified complaint or that she had a full and fair opportunity to be heard in the action. As will be shown in greater detail below, there can be no question that Petitioner had notice of the action below and an opportunity to be heard, and the well settled law of this Court supports a finding that the standards for Due Process under the Fourteenth Amendment were met in this case. Thus, the petition for a writ of certiorari should be denied in all respects.

A. The Commencement of the Underlying Action

The underlying action was commenced to foreclose on a mortgage dated December 31, 1986 (the "Mortgage"), given by Petitioner to Respondent due to Petitioner's failure to pay her monthly mortgage payment due on March 1, 1991. The Mortgage is secured by the premises known as 404-418 East 66th Street, New York, New York, Unit 12A (the "Premises").

Due to Petitioner's default, Respondent sent her a default letter and acceleration letter. However, Petitioner failed to cure her default[1] and the underlying action was commenced by service of the summons and verified complaint (hereinafter collectively referred to as the "Summons") on Petitioner within the State of New York on September 11, 1991 on a person of suitable age and discretion, Petitioner's doorman, at

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[1] While the matter of Petitioner's default on the Mortgage is not before this Court, Petitioner restates her argument which has been raised and rejected on numerous occasions that she tendered late payments to Respondent before Respondent commenced the foreclosure action. The courts below held that at the time Petitioner attempted to make payments to Respondent, the Mortgage had already been accelerated, the foreclosure action commenced and the payments were significantly less than the amount owed to Respondent at that time, and accordingly, these payments were properly rejected by Respondent and returned to Petitioner.

the Premises which Petitioner sets forth on the Mortgage as her address, and these documents were mailed to Petitioner to the Premises, Petitioner's last known residence, in accordance with New York Civil Practice Law and Rules ("CPLR") section 308(2).

B. Petitioner's Extensive Participation In the Action

1. Petitioner's Application to Extend Her Time to Answer for Ninety Days

After Petitioner's time to answer the verified complaint expired, she made an application to the trial court to stay the underlying action and extend her time to answer for ninety days. Respondent opposed Petitioner's application, and after hearing oral argument from Petitioner and Respondent's counsel, the trial court, by order dated November 13, 1991 (the "November Order"), denied Petitioner's request for a stay but extended Petitioner's time to answer for thirty days from service by the Respondent of a copy of the November Order with notice of entry upon Petitioner.[2] A copy of the November Order with notice of entry is reproduced as part of Respondent's appendix at 1a.[3]

After being served with the November Order as directed by the trial court, Petitioner appeared in this action by an unverified answer dated January 24, 1992, consisting of general denials, admissions and one affirmative defense alleging that she made mortgage payments which Respondent refused to accept and that she was not served with the Summons.

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[2] Copies of every pleading in the proceeding below were served on Petitioner.

[3] Citations to Respondent's appendix will hereinafter be referred to as "(Appendix __a)". Citations to Petitioner's appendix will hereinafter be referred to as "(Petitioner's Appendix __")

2. The Trial Court's Award of Summary Judgment in Favor of the Respondent

On June 10, 1992, Respondent moved for, among other things, summary judgment and the appointment of a referee to compute the amount due and owing to Respondent. Petitioner opposed the motion by denying that she was in default under the Mortgage and that she was served with the Summons. The trial court granted Respondent's motion for summary judgment, found that Petitioner had been properly served and appointed a referee to compute the amount due and owing to Respondent.

Thereafter, by motion dated June 4, 1993, Petitioner moved to reargue Respondent's motion for summary judgment by asserting the same arguments Petitioner previously raised in her opposition to Respondent's motion for summary judgment. Respondent opposed the motion, and the trial court denied Petitioner's motion to reargue.

3. The Referee's Hearing

On May 26, 1993, Respondent submitted a proposed Oath and Report to the referee for his consideration and review, and copies of the Oath and Report were sent to Petitioner.

Further, at a hearing conducted by the referee, Petitioner's counsel actively cross-examined Respondent's witness and participated in the proceedings, and Petitioner appeared and participated at the hearing and made various comments on the record, but never gave any testimony regarding her default under the Mortgage. Thereafter, the Referee signed the Oath and Report.

4. Respondent's Motion to Confirm the Referee's Report and for a Foreclosure Judgment

By motion dated September 13, 1993, Respondent moved to confirm the Referee's Report and for entry of a Judgment of Foreclosure and Sale, and by cross-motion dated October 1,

1993, Petitioner opposed the motion and attempted to convince the trial court that, among other things, she was not in default on the Mortgage. Respondent opposed the cross-motion.

By decision dated November 26, 1993, the trial court granted Respondent's motion to confirm the Referee's Report, awarded Respondent a Judgment of foreclosure and sale, and denied Petitioner's cross-motion in all respects.

By motion brought by order to show cause dated January 26, 1994, Petitioner attempted to, among other things, reargue Respondent's motion to confirm the referee's report and for a judgment of foreclosure and sale and to reargue for the *second* time, Respondent's motion for summary judgment. Respondent opposed this motion. After hearing oral argument by the respective attorneys for Respondent and Petitioner, the trial court denied Petitioner's motion in its entirety.

Thus, pursuant to the foreclosure judgment granted by the trial court, Respondent scheduled a foreclosure sale and notice of the sale was served on Petitioner's counsel.

Thereafter, Petitioner moved for and was granted an order fixing an undertaking pending her appeal of the trial court's order and foreclosure judgment, and staying the foreclosure sale. NP Funding II L.P. ("NP Funding")[4], the successor in interest to Respondent, opposed the motion. The trial Court granted, *inter alia*, that portion of Petitioner's motion seeking a stay and an undertaking.

Petitioner filed a surety bond in accordance with the trial court's order and due to the stay, the foreclosure sale was cancelled.

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[4] By assignment of mortgage executed on February 7, 1994, The Dime Savings Bank of New York, FSB ("Dime"), as assignor, assigned the Mortgage to NP Funding, as assignee. This office previously represented the Dime in the underlying action, and now represents NP Funding, the real party in interest.

5. Petitioner's Appeal of the Trial Court's Orders

Petitioner appealed from the trial court's order and judgment of foreclosure and sale to the Supreme Court of the State of New York, Appellate Division, First Department and sought review of that court's order granting Respondent summary judgment and the appointment of a referee to compute, and the order denying Petitioner's application to reargue its motion for summary judgment. Petitioner repeated all of her arguments previously rejected by the trial court including her argument that she was not properly served with process in the underlying action.

By decision and order entered on April 18, 1995, (Petitioner's Appendix at A-4), the Appellate Division, First Department of the Supreme Court of the State of New York, unanimously affirmed the order and judgment of the trial court and upheld that court's findings that Petitioner was properly served with the summons and verified complaint:

> Under the circumstances, substituted service (CPLR 308(2)) in this foreclosure action was properly made upon the doorman of the premises covered by the mortgage, since [Petitioner] represented her address to be said premises and since there is insufficient evidence to demonstrate that [Respondent] knew that [Petitioner] resided elsewhere.

Dime Sav. Bank of New York v. Glavey, 214 A.D.2d 419, 625, N.Y.S.2d 181, 182 (1st Dept. 1995).

Obviously displeased with the First Department's decision, Petitioner moved for permission for leave to appeal to the Court of Appeals and to reargue her appeal. Respondent opposed that motion and by order entered on August 3, 1995, (Appendix 6a), the First Department denied the motion and awarded Respondent $100.00 for costs.[5]

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[5] Despite Respondent's written demand therefor, Petitioner has disregarded the order of the First Department and has failed to pay Respondent's costs.

Thereafter, Petitioner moved the Court of Appeals of the State of New York for leave to appeal to that Court. Respondent opposed that motion and by decision dated November 30, 1995, that motion was denied and the Court of Appeals awarded Respondent $100 costs and necessary reproduction disbursements.[6] See Appendix at 8a.

Thus, having had ample opportunity from the commencement of the underlying case to interpose an answer and assert her defenses and having vigorously litigated this case for over three years, it cannot be said with any seriousness that the Petitioner was not given notice and an opportunity to be heard.

It follows that the only conclusion that can be reached is that Petitioner's Due Process rights were not violated and the Court of Appeals correctly affirmed the lower court's findings that Petitioner was properly served with notice of the underlying action and that Petitioner had an opportunity to be heard in the case below. And those findings are fully supported by the underlying record and the case law applicable to Due Process under the Fourteenth Amendment.

Accordingly, the petition for a writ of certiorari should be denied in all respects.

SUMMARY OF ARGUMENT

Notwithstanding the fact that Petitioner was served with the Summons at the Premises and a mailing of the Summons was made to that address, Petitioner now claims that her Due Process rights were violated. Petitioner's argument is based on her assertion that she is not a resident of New York, which assertion is contradicted by the Mortgage which provides that the Premises was her residence. Moreover, in light of the facts

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[6] Petitioner has failed to pay these costs as well. In addition, as Petitioner did not include this order in its entirety, Respondent has reproduced it at Appendix 8a.

conclusively demonstrating that she was given numerous opportunities to raise the same baseless arguments, its strains credulity to believe that she has not been given a full and fair opportunity to be heard herein.

ARGUMENT

I. The Court of Appeals' Decision was Consistent with the Due Process Requirements of the Fourteenth Amendment

Petitioner claims that the method of service used in the underlying action did not satisfy the standards of constitutionally adequate notice under the Due Process Clause of the Fourteenth Amendment. Petitioner makes this argument by claiming that at the time she was served, she was a nonresident of New York, the doorman at the Premises had no relationship to her and the process server did not try to gain access to the apartment, nor make an attempt to serve her personally.

As was previously set forth herein, Petitioner's argument ignores the fact that: (i) she was served with the Summons at the address which she represented to Respondent in the Mortgage to be her residence and a mailing of the Summons was sent to her which she has never denied receiving (ii) Respondent had no way of knowing that Petitioner may not have resided at the Premises and it was only after the underlying action was commenced did Petitioner, for the first time, claim that she did not reside there (iii) the trial court below granted Petitioner's motion to extend her time to answer the verified complaint and Petitioner interposed an answer with defenses and (iv) Petitioner actively participated in the underlying action from its commencement to the entry of an order and judgment of foreclosure and sale and on appeal.

This Court has long held that when an action is commenced to deprive individuals of their property, due process is satis-

fied by "notice *reasonably calculated*, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). And "[t]he reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . . " *Id.* at 314.

Applying the standard set in *Mullane*, to the facts of the case herein, it is clear that service in the underlying action satisfies the requirements of Due Process as the record below establishes that the Summons was delivered and mailed to Petitioner at the address which she represented to be her residence and Petitioner actively participated in the action below for over three years.

Further, it is well settled that substituted service on a party's doorman is valid service. *Smith v. Kincaid*, 249 F.2d 243 (6th Cir. 1957) (service on defendant's landlady was sufficient even absent a showing that summons was delivered to defendant); *Braun v. St. Vincent's Hosp.*, 57 N.Y.2d 909, 456 N.Y.S.2d 763 (1982) (service on doorman came within New York rules of service). And in all events, substituted service is a proper method of service. *Bossuk v. Steinberg*, 58 N.Y.2d 916, 460 N.Y.S.2d 509 (1983) (substituted service meets the standard of due process and gives the party served notice of the pendency of the action).[7]

This Court has also ruled that service by mail meets the requirements of due process. *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983) (notice by mail is minimum

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[7] In addition, Petitioner, relying on *F.I. Dupont, Glore Forgan & Co. v. Chen*, 41 N.Y.2d 794, 396 N.Y.S.2d 343 (1977), argues that Respondent should have tried to serve her personally. Such reliance is misplaced. Thus, the *Dupont* court, holding that service on a doorman is proper, ruled that ". . . any consideration of whether due diligence was or was not used in an effort to make delivery to these defendants in person is irrelevant." 41 N.Y.2d at 797, 396 N.Y.S.2d at 345.

constitutional precondition to a proceeding which will adversely affect the property interest of a party).

Indeed, this Court has recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice. *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478, 489 (1988) (service by mail is reasonably calculated to provide actual notice).

Moreover, where as here Petitioner had actual notice of the underlying action and actively participated in it, the method of service used is valid. *Nowell v. Nowell*, 384 F.2d 951, 953 (5th Cir. 1967), *cert. denied*, 390 U.S. 956 (1968) (adequacy of service turns on the specific facts of case and whether defendant received notice of action).

Further, Petitioner's reliance on this Court's ruling in *Greene v. Lindsey*, 456 U.S. 444 (1982), is misplaced. Thus, in *Greene*, the Court held that service of a summons in an eviction proceeding on the door to the tenant's apartment in a public housing project did not satisfy the minimum standards of due process when it was known that the notices were torn down by other tenants and the tenants claimed that they never received the posted notice and did not learn of the proceeding until after default judgments had been entered against them and their opportunity to appeal had run. 456 U.S. at 453. The Court in *Greene* also ruled that mailing the notice, "[p]articularly where the subject matter of the action also happens to be the mailing address of the defendant" may be relied upon to provide interested persons with actual notice. 456 U.S. at 452.

Here however, unlike the tenants in *Greene*, Petitioner never denied that she had notice of the underlying proceeding, nor can she in light of the fact that she was an active participant in the proceedings in the trial court below and on appeal and the Summons was mailed to her.

Petitioner's reliance on *Armstrong v. Manzo* 380 U.S. 545 (1965), is also unpersuasive. The Court in *Armstrong*, reviewed the constitutionality of an adoption proceeding in which the petitioner-father was not notified of the proceeding until after it was final and held that failure to give the petitioner notice of the pending adoption proceeding violated the requirements of due process.

Likewise, Petitioner's reliance on *Peralta v. Heights Medical Ctr., Inc.*, 485 U.S. 80 (1988) is of no moment. In *Peralta*, unlike the facts of this case, the record showed that service was defective and appellant was not served, and a default judgment was entered against appellant without any notice. Thus, the Court found that appellant's Due Process rights were violated because he was not given notice at a meaningful time and did not have an opportunity to be heard.

It cannot be said that this was the case in the underlying action. On the contrary, Petitioner's claim that she was denied her right to Due Process rings hollow in light of her admission that she knew of the underlying action from the time the action was commenced, the record below establishes that she answered the Summons and asserted defenses to it and actively participated in the action for over three years and on appeal.

It follows that Petitioner was served with notice of the underlying proceedings and had a full and fair opportunity to assert her defenses in the action herein and be heard in the court below, and her claim that her right to Due Process was violated must be rejected outright.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

BARRY G. FELDER
Counsel of Record
BROWN RAYSMAN & MILLSTEIN LLP
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212-944-1515

of counsel

James K. Landau
Melanie Finkel

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No. 20452/91
IAS PART (Sherman, J.)

THE DIME SAVINGS BANK OF NEW YORK, FSB,

Plaintiff,

—against—

ANNE M. GLAVEY, THE BOARD OF MANAGERS OF THE HARDENBROOK HOUSE CONDOMINIUM,

Defendants.

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true copy of an order duly entered in the office of the City Register of New York County on November 20, 1991.

Dated: New York, New York
December 26, 1991

Yours, etc.

BROWN RAYSMAN & MILLSTEIN
Attorneys for Plaintiff
THE DIME SAVINGS BANK OF NEW YORK, FSB
120 West 45th Street
New York, New York 10036
(212) 944-1515

SUPREME COURT: NEW YORK COUNTY

Index No. 20452/91
IAS PART 19
#24 OF 11/1/91

THE DIME SAVINGS BANK OF NEW YORK, FSB,

Plaintiff,

—against—

ANNE M. GLAVEY, THE BOARD OF MANAGERS OF THE HARDENBROOK HOUSE CONDOMINIUM, AND "JOHN AND/OR JANE DOE #10, INCLUSIVE, THE LAST TEN NAMES BEING FICTITIOUS AND UNKNOWN TO PLAINTIFF, THE DEFENDANTS INTENDED TO BE THE TENANTS, OCCUPANTS, PERSONS OR CORPORATIONS, IF ANY, HAVING OR CLAIMING AN INTEREST IN OR LIEN UPON THE PREMISES DESCRIBED IN THE COMPLAINT, THEIR TRUE NAMES BEING UNKNOWN TO PLAINTIFF,

Defendants.

BURTON S. SHERMAN, J.:

The defendant, pro se, mortgagor seeks an order extending her time in which to file an answer. The plaintiff, mortgagee, in this foreclosure action, alleges that it served the summons and complaint on defendant on September 11, 1991.

While it appears that defendant alleges that service of process was improper, she also seeks an extension of time in which to answer alleging that she first became aware of this action on October 2, 1991.

The defendant seeks an extension of 90 days in which to file her answer due to the fact that she is a stewardess and is also in the process of changing jobs.

While this court may sympathize with defendant, such is not a legal basis for extending defendant's time in which to answer the complaint.

This court will, however, grant defendant an order extending her time to answer and/or move with respect to the complaint for a period of 30 days from service by plaintiff of a copy of this order with notice of entry upon defendant, pro se.

So ordered.

Dated: November 12, 1991

s/ Burton S. Sherman
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No. 20452/91
IAS PART (Sherman, J.)

THE DIME SAVINGS BANK OF NEW YORK, FSB,

Plaintiff,

—against—

ANNE M. GLAVEY, THE BOARD OF MANAGERS OF THE HARDENBROOK HOUSE CONDOMINIUM,

Defendants.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LILA E. GASTON, being duly sworn, deposes and says:

6. I am over eighteen years old, am not a party to this action and reside at 170 Laurel Avenue, Irvington, New Jersey 07111.

7. On December 26, 1991, I served a true copy of the Notice of Entry and order herein by mailing the same in a sealed envelope with the postage paid thereon, in an official depository on the U.S. Postal Service, located within the State of New York, addressed to the last known address of the addressees as indicated below:

ANNE M. GLAVEY
P.O. Box 1514
New York, New York 10008-8905

and -

404-418 East 66th Street, Unit 12A
New York, New York 10021

Horing & Welikson
Attorneys for Defendant
THE BOARD OF MANAGERS OF
THE HARDENBROOK HOUSE CONDOMINIUM
8 Haven Avenue
Port Washington, NY 11050

s/ Lila E. Gaston

Sworn to before me this
__ day of December, 1991

s/ Melanie Finkel
Notary Public

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on August 3, 1995

Present—Hon. Joseph P. Sullivan, Justice Presiding
Ernst H. Rosenberger
Richard W. Wallach
Sidney H. Asch
Milton L. Williams, Justices

Index No. 20452/91
M-1981

THE DIME SAVINGS BANK OF NEW YORK,

Plaintiff-Respondent,

—against—

ANNE M. GLAVEY,

Defendant-Appellant,

THE BOARD OF MANAGERS OF
THE HARDENBROOK HOUSE CONDOMINIUM,

Defendant.

The above-named defendant-appellant having moved for reargument of, or leave to appeal to the Court of Appeals from, the Decision and Order of this Court entered herein on April 18, 1995 (Appeal No. 54541), unanimously affirming an

order and judgment (one paper), Supreme Court, New York County, entered on March 8, 1994,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that said motion be and the same hereby is denied, with $100 costs.

ENTER:

s/ Catherine O'Hagan Wolfe
Clerk

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the thirty day of November, 1995

PRESENT, Hon. Judith S. Kaye, Chief Judge, presiding.

1-10 Mo. No. 1259

THE DIME SAVINGS BANK OF NEW YORK,

Respondent,

—against—

ANNE M. GLAVEY,

Appellant,

THE BOARD OF MANAGERS OF
THE HARDENBROOK HOUSE CONDOMINIUM,

Defendant.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with one hundred dollars costs and necessary reproduction disbursements.

s/ DONALD M. SHERAW
Donald M. Sheraw
Clerk of the Court

Supreme Court, U.S.
F I L E D
MAY 23 1996

No. 95-1530

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

ANNE M. GLAVEY,

Petitioner,

vs.

THE DIME SAVINGS BANK OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE NEW YORK STATE COURT OF APPEALS

PETITIONER'S REPLY BRIEF

ANNE M. GLAVEY
Petitioner Pro Se
510 Grandview Drive
Highland Lakes
New Jersey 07422
(201) 764-1427

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

TABLE OF CONTENTS

	Page
FACTUAL AND PROCEDURAL STATEMENT...	1
LEGAL ARGUMENT	
SERVICE UPON A DOORMAN WHO HAS NOT DENIED ACCESS TO AN APARTMENT OF A NON-RESIDENT DEFENDANT IS A DENIAL OF DUE PROCESS AND CONTRARY TO THE ESTABLISHING CASE LAW OF THE STATE OF NEW YORK	9
CONCLUSION.....	10
APPENDIX.....	A-1

TABLE OF AUTHORITIES

Cases:	Page
Biological Concepts, Inc. v. Rudel, 159 AD2d 32, 558 N.Y.S. 2d 312 (N.Y.AD 3 Dept. 1990)	10
F. I. DuPont, Glore, Forgan & Co. v. Chen, 41 NY2d 794.....	10
McCormack v. Goldstein, 204 AD2d 121, 611 N.Y.S.2d 185 (N.Y.A.D. 1 Dept. 1994)	10
Rosenberf v. Haddad, 208 AD2d 468, 617 N.Y.S.2d 330 (N.Y.A.D. 1 Dept. 1994)	10
State Street Bank and Trust Co. v. Broadway/St. Nicholes Assoc., 214 AD2d 474, 625 N.Y.S.2d 217 (N.Y.A.D. 1 Dept. 1995)	10

FACTUAL AND PROCEDURAL STATEMENT

Petitioner, Pro se, responds to. Respondents brief, once again, a distortion of the facts surrounding this petitioner's foreclosure of her apartment.

Once again, Petitioner will set forth in a clear chronological manner the events which transpired from the onset of this ordeal, right through and up to the Court of Appeals of the State of New York and show this Honorable Court that my rights to Due Process have, indeed been denied, both by Improper Service of the Summons and Complaint on a doorman and the inappropriate granting of Respondents Motion for Summary Judgment.

Petitioner is a responsible person, having worked for Pan Am for 25 years, in charge of 15 persons at any given time. Prior to this foreclosure action, I had impeccable credit. I am currently employed by Delta Airlines, also in a supervisory capacity.

Since 1972, Petitioner was renting the subject apartment and in 1986, purchased same and borrowed $112,000.00 from Dime. My application clearly shows the subject apartment, my residence in New Jersey and my place of work. Thereafter, I paid my monthly payments diligently.

My troubles began on or around January 31, 1991, when I received a telephone call from a Mrs. Becker, of Dime, informing me that there was an unapplied credit of $1210.68 in my account. That would leave a balance of $76.00 owed to the Dime for my February payment, the monthly payments were $1286.84. However, the Dime demanded that I submit $234.84 for February, 1991, which I did. Money Order (no. 42832038521) of $234.84 on February 7, 1991 (denominated as 9102097) marked with the inscription "Bal Feb 91 Mortg". (A. 1 & A. 2) It was cashed by Dime on February 12, 1991, the back and front of order (A. 1 & A. 2). This payment resulted in an overpayment of $160.00.

March, 1991, personal check no. 843, on 3/1/1991, in the amount of $1286.84 to the Dime, with the inscription "6055867." Dime cashed that check on March 2, 1991, back and front of check. (A. 3 & A. 4)

Thereafter, I received a letter from the Dime, dated March 20, 1991, stating, without explanation, that I owed $80.00. (A. 5)

April, 1991, two Money Orders numbered 43100434157 and 43100434168 in the amounts of $686.84 and $600.00, totalling $1286.84, dated April 5, 1991 (denominated as 910405) each marked with the inscription "April 91" cashed by Dime on April 19, 1991, back and front orders. (A. 6 & A. 7)

May, 1991, two Money Orders numbered 43103691527 and 43103692506 in the amounts of $700.00 and $586.84, totalling $1286.84, dated May 6, 1991 (denominated as 910516) and each marked with the inscription "May 91 6055867". Dime did not cash those money orders, but instead, held them. However, it is clear that they did, indeed, receive them, as Dime sent me a note, dated May 13, 1991, stating "Insufficient Funds." "Please remit $3,624.21 Certified Funds." (A. 8 & A. 9 & A. 10)

June, 1991, personal check 910, dated June 10, 1991, in the amount of $1286.84, with the inscription "June 6055867", June 21, 1991, Dime returned the June check, with a note stating "not total amount due of $4996.75." Again, there was no explanation by Dime as to how this figure was calculated. (A. 11 & A. 12)

July, 1991, check no. 930 dated July 4, 1991 in the amount of $1286.84, with the inscription "July 6055867" and mailed on July 4, 1991, with cover letter, once again, enclosing the June check. (A. 13 & A. 14)

July 17, 1991, I received a letter, stating that the return of my alleged "partial payment" for June and July, in the amounts of $1286.84, were enclosed. 910 and 930, were indeed the June and July checks (A. 15), no legal papers were served upon me, at that time. (A. 15)

August, 1991, check number 940 dated August 5, 1991, in the amount of $1,286.84, with the inscription "Aug '91" and mailed on August 5, 1991 to Dime, again with cover letter. (A. 16 & A. 17 & A. 18)

The Dime-Gram, of August 30, 1991, clearly outlines the return of, once again, the June, July and now the August, payments, a copy of the investigation, which was never sent. (A. 19)

October 2, 1991, by chance, I visited my apartment, at the request of my tenant. Amongst a pile of packages with the doorman, was a large brown envelope, postmarked *September 12, 1991,* addressed to me at 404-418 East 66th Street, New York, N.Y. 10021. The address did not contain my apartment number, but was written in different handwriting "12A Joe the Supr." (A. 20)

The envelope contained a Summons and Complaint, both dated August 21, 1991. On October 3, 1991, I filed a Notice of Motion, denying the Charges, that I was improperly served and requesting an extension of time. I never did receive the Summons and Complaint allegedly served on the doorman.

Melanie Finkel appeared on behalf of Dime and opposed my Motion, stating at paragraph 3. of her Affidavit: "The Mortgagor has defaulted on the terms of the Mortgage by failing to make her monthly mortgage payment due on *March 1, 1991,* and failing to make all *subsequent payments* thereafter. The Mortgagor's time to answer or otherwise appear expires on October 22, 1991. (Emphasis added).

At paragraph 5, it states: *"Moreover, the Mortgagor never denies that she is in default under the Mortgage.* The only relevant fact for the Court's determination is that DIME has not received a penny from the Mortgagor since March 1, 1991. (Emphasis added). Obviously, this is blatantly false.

On November 13, 1991, Judge Sherman signed an Order, extending the time "for a period of 30 days from service by plaintiff of a copy of this order with notice of entry upon defendant, pro se." This Order was entered on November 20, 1991, and the Service of *Notice of Entry* is dated *December 26, 1991.* Therefore Respondents Brief at page 3, is totally misleading, false, and contradictory to their very own documents. Also, at this juncture, there was nothing to "Stay." Judge Sherman mentioned the Improper Service, but did not address it, in a traverse hearing, or otherwise rule on it.

Indeed, my Answer, filed on January 24, 1992, was timely and Verified, contrary to the Respondents assertions. In fact, my "Verified Answer" is later attached to another Notice of Motion of Respondent. Of course, my Answer did challenge and address each issue alleged in the Complaint, and I clearly outlined that I was not in default in my monthly mortgage payments, and had paid each monthly payment in full and on time.

The Complaint alleges on page 3, paragraph 5, "The Mortgagor failed to comply with the conditions of the Mortgage by failing to pay the payment of principal and interest which became due and payable on *March 1, 1991* and failing to make any subsequent payment of principal and interest." At paragraph 6, it states "On or about March 12, 1991, DIME sent notice to the Mortgagor stating that the Mortgagor was in default under the Mortgage for non-payment of principal and interest." (their Exhibit B) This letter of alleged default claims no payments received for February and March, 1991, in the amount of $1286.84, for each month, which would calculate to $2573.68. The Dimes letter claims the amount of $2251.67, "including late charges." Even their own calculations cannot be reconciled.

To further add to the confusion, Dime's letter of March 20, 1991, (8 days after the letter of the alleged default) states the amount is only $80.00. Petitioner, clearly, and as always demonstrated and documented in all of my papers to the Courts for almost five years, there was no default, but, in fact, an excess in my account, later confirmed by Dimes very own figures. It is clear that before March 12, 1991, that Dime had already cashed February money order of $234.84 and March check of $1286.84. Both these amounts, plus the unapplied amount/credit of $1210.68, (which should have been applied to the February) makes the total for February and March $2732.36. Accordingly, as of March 12, 1991, there was an overpayment of $480.69.

Dimes Exhibit C, July 15, 1991 acceleration letter, states that no payment was received for March 1, 1991, April 1, 1991, May 1, 1991, June 1, 1991 and July 1, 1991, in the

amount of $1286.84 for each month, plus late charges of $1060.07. Every single one of these payments were made in full and on time to Dime. In fact, even their Exhibit C, proves that they were still in possession of all my payments on July 12, 1991 (acceleration letter).

June 10, 1992, Dime filed a Notice of Motion for *Summary Judgment,* with the respective *Affidavits* of Phyllis R. Edwards, V.P. of Dime and Melanie Finkel, contradicting their original allegations, now stating that only March 1991 payment was due, on page 3, paragraph 6, "On or about March 12, 1991, DIME sent notice to the Mortgagor stating that the Mortgagor was in default under the Mortgage for non-payment of principal and interest for the two payments due on February 1, 1991 and March 1, 1991, respectively." (Dimes Exhibit B).

Further, at paragraph 7, it states: "Thereafter, on April 9, 1991, DIME received from the Mortgagor *one monthly payment* in the amount of $1286.84 which was applied to the February, 1991 payment. No further payments were received. Thus, the Mortgagor failed to cure her default, and on *July 15, 1991,* DIME exercised its right to receive immediate payment in full which has not been received." At paragraph 8, it states: "*After* DIME accelerated the Mortgage, the Mortgagor attempted to tender *three partial payments* to DIME and DIME properly rejected these payments." (the Edwards Affidavit). The evidence is quite to the contrary, DIME had my checks, did not cash them, claimed a default and acceleration, and then returned them as "insufficient."

Melanie Finkel's *Affidavit* is contradictory to her *Affidavit* in the original Complaint (page 3) now stating "On or about March 12, 1991, DIME sent notice to the Mortgagor stating that the Mortgagor was in default under the Mortgage for non-payment of principal and interest for the monthly payments due on *February 1, 1991* and March 1, 1991, respectively in the amount of $1,286.84 each (Dimes Exhibit B). Thereafter, on April 9, 1991, DIME received one payment from the Mortgagor in the amount of $1,286.84 which was applied to the payment due on February 1, 1991. However, *no further*

payment was received and the Mortgagor failed to cure her default." (Finkel's Affidavit, page 2). Again, the payments were received by Dime, held to "create" a default, then returned *after* the acceleration letter.

July 22, 1992, Petitioner filed Affidavit in *Opposition* to Motion for *Summary Judgment,* again outlining and demonstrating with submitted evidence, that I had, indeed, paid February and March, 1991, and that these payments were cashed by Dime, the three individual checks, in the full amount for June, July and August, 1991, respectively, were, indeed, sent to Dime each month, on time, and were returned, unjustifiably.

Reply *Affidavit* from Phylis R. Edwards of August 4, 1992, and once again, adding to the confusion, from the previous Affidavits, now states in page 2, paragraph 2: "Thus, on March 2, 1991, the Mortgagor, being in arrears for the monthly payments due on *January 1, 1991,* February 1, 1991 and March 1, 1991, totalling $3,860.52, made one payment to DIME in the amount of $1286.84. Dime applied this check to the January monthly payment, and Mortgagor remained in default for the non-payment of installments of principal and interest due for the months of February and March. A copy of the January, 1991 payment is attached as Exhibit A to the Mortgagor's answer (the "Answer"). At paragraph 3: "Thereafter, as the Mortgagor remained two months in arrears, DIME sent out a default letter dated March 12, 1991, a copy of which is attached as Exhibit B to the verified complaint." At paragraph 4, "On April 9, 1991 DIME received a check from the Mortgagor in the amount of $1,286.84 (see Mortgagor's Exhibit B). This check was applied to the February, 1991 payment, and the Mortgagor continued to be two months in arrears." 5. "In paragraph 9 of the Mortgagor's affidavit in opposition, she alleges that in May, 1991 she made a payment in the amount of $1,286.84. However, a review of our records indicates that DIME did not receive any such payment from the Mortgagor in May, 1991."

Contrary to the above statements, I had not attached my January 1991, payment to either my Verified Answer or Affidavit in Opposition to the Motion for Summary Judgment, as

accordingly, the January 1991 payment was not in dispute, either in the Complaint or in the Motion papers. In the meantime, no mention was made to the February, March and April, 1991 payments, all of which had been cashed.

The "Edwards Affidavit" goes on to state in paragraph 5. "In any event, this payment was significantly less than the amount owed DIME at that time which totalled $3,860.52." This figure is equivalent to three monthly payments, which would be for April, March and February, 1991. Those three monthly payments were cashed by Dime. It is incorrect to state that they did not receive the May, 1991 payment, since the record and their own documentation clearly shows the exact amount of $1286.84 were received in their note of May 13, 1991. Simply put, Dime was setting the stage for a foreclosure action.

Further at paragraph 6 (Edwards Affidavit) he goes on to state: "No further payments were received from the Mortgagor and she defaulted on the payments due in June and July, 1991 as well."

Nothing could be further from the truth, and it is worthy to note the non consecutive check Nos. 910, 930, 940.

The "Edwards Affidavit" continues with his incorrect statements and at paragraph 7 states: "Subsequently, in August, 1991, the Mortgagor attempted to tender to DIME three payments totalling $3,860.52 (see Mortgagor's Exhibits D, E, and F). These payments were properly rejected by DIME as the mortgage was already accelerated by DIME, the foreclosure action had been commenced by DIME's attorneys, and the total arrears at that time was $7,721.04. In addition, not only did these payments arrive after acceleration of the mortgage and after the commencement of this action, but the payments were significantly less than the amount of the arrears owed to the DIME."

Note that Exhibits D, E, and F, of the petitioner, are, indeed separate, dated June, July and August, 1991, respectively, with the exact amount due on each check. In addition, their own documentation clearly proves that these checks were returned to me individually. Consequently, these payments did

not arrive *after* acceleration of the mortgage, but *prior* to acceleration, and the payments were *not* less than the amount of the alleged arrears owed to Dime. Simply put, Dime manufactured a default by not cashing the checks and returning them, and now states they returned them after acceleration.

August 13, 1992, Petitioner filed, Further Reply in Opposition to Respondents Motion for *Summary Judgment*, again, denying each and every allegation asserted by Dime, in addition, now showing that I had, indeed paid the *January, 1991* payment, in the amount of $1311.00 on January 9, 1991, Money Orders numbered 42828612928 (denominated as 910109), each marked with the inscription "Jan 91 6055867." They were cashed by Dime on January 14, 1991 (and attached as Exhibit J). Submitted for the third time, documented evidence, of all other monthly payments made and cashed by Dime.

On December 8, 1992, Judge Sherman granted Dime Motion for *Summary Judgment*. His Decision, simply paraphrases and clearly accepts, without questions, Dime's allegations, as uncontradicted fact, with total disregard to my documented evidence. Judge Sherman retired at the end of the year.

Thereafter I hired an attorney -- Stephen Latzman. Every Reargument Motion, Motions, Appeals and leave to appeal have been denied to this Petitioner, even though I continued with my documented factual evidence.

While the issue of Improper Service had been vaguely addressed, the issue of Summary Judgment was never addressed and simply glossed over.

LEGAL ARGUMENT

SERVICE UPON A DOORMAN WHO HAS NOT DENIED ACCESS TO AN APARTMENT OF A NON-RESIDENT DEFENDANT IS A DENIAL OF DUE PROCESS AND CONTRARY TO THE ESTABLISHING CASE LAW OF THE STATE OF NEW YORK.

Service upon this Petitioner was improper, when made on the doorman of the apartment building of the non-resident defendant.

The Process Server did not request, nor was he impeded from going to the apartment. The Mailed Summons lacked the Apt. No.

The Court of Appeals in *F. I. DuPont, Glore, Forgan & Co. v. Chen* 41 NY2d 794, 396, N.Y.S. 2d 343 (1977), previously cited.

The critical factor in the court's determination to uphold the service in that case turned on the clear factual evidence that "the doorman" would not permit him (process server) to go up to the defendant's apartment" (41 N.Y. 2d 796).

The rationale of the court of appeals in *DuPont* has been consistently relied upon by the New York appellate Divisions First and Third Departments. See *Biological Concepts, Inc. v. Rudel,* 159 A.D. 2d 32, 558 N.Y.S. 2d 312 (N.Y.A.D 3 Dept. 1990) "Unlike the situation in DuPont, the process server was not denied access to the apartment building by a doorman who took the papers so as to extend the bounds of defendant's apartment." (id at 313); *Rosenberg v. Haddad*, 208 A.D. 2d 468, 617 N.Y.S. 2d 330 (N.Y.A.D. 1 Dept. 1994) "In any event, service that is left with a doorman, followed by a mailing, is valid where access to the apartment is prohibited" (id at 330); *State Street Bank and Trust Co. v. Broadway/St. Nicholes Assoc.*, 214 A.D. 2d 474, 625 N.Y.S. 2d 217 (N.Y.A.D. 1 Dept. 1995) "he left the summons and complaint with the doorman after one of appellant's partners told the doorman, through the intercom, not to allow the process server to enter (compare DuPont) (id at 218); McCormack v.

Goldstein, 204 A.D. 2d 121, 611 N.Y.S. 2d 185 (N.Y.A.D. 1 Dept. 1994) "Plaintiff's process server was not barred from proceeding to defendant's apartment by the doorman of defendant's building, whose permission to enter was never requested ... (id at 186).

Respondents knew that Petitioner did not reside in the apartment, by the appointment of a Receiver to collect rents.

Since service was improper, jurisdiction of the person of the defendant -- this Petitioner was never obtained.

The granting of Summary Judgment was improper and operated to deny this Petitioner due process right to a trial.

CONCLUSION

For the Reasons set forth above, I hope and pray that my plight to seek justice to this Honorable Court, after five long years, will not go in vain, that the judgment be reversed, complaint dismissed, or a Writ of Certiorari granted, or the case remanded back for trial, as this Petitioners due process rights were violated, under the United States Constitution.

Dated:

Respectfully submitted,

ANNE M. GLAVEY,
Petitioner -- Pro se

510 Grandview Drive,
Highland Lakes, New Jersey, 07422.

APPENDIX

CUSTOMER'S RECEIPT

DO NOT SEND THIS RECEIPT FOR PAYMENT
KEEP IT FOR YOUR RECORDS

4283203852 | 910207 | 100041 | 234*84

SERIAL NUMBER | YEAR MONTH DAY | POST OFFICE | U.S. DOLLARS AND CENTS

PAY TO: DIME Savings Bank
STREET: P O Box 9308 ENB PLAZA
CITY: ANNUNDALE STATE: NY ZIP: 11556

PURCHASER: Hanz M GLAVEY
STREET: 80 BOX 1514
CITY: NY STATE: NY ZIP: 10009 —

CUSTOMER RECEIPT Bal Fet Hwtg. 191

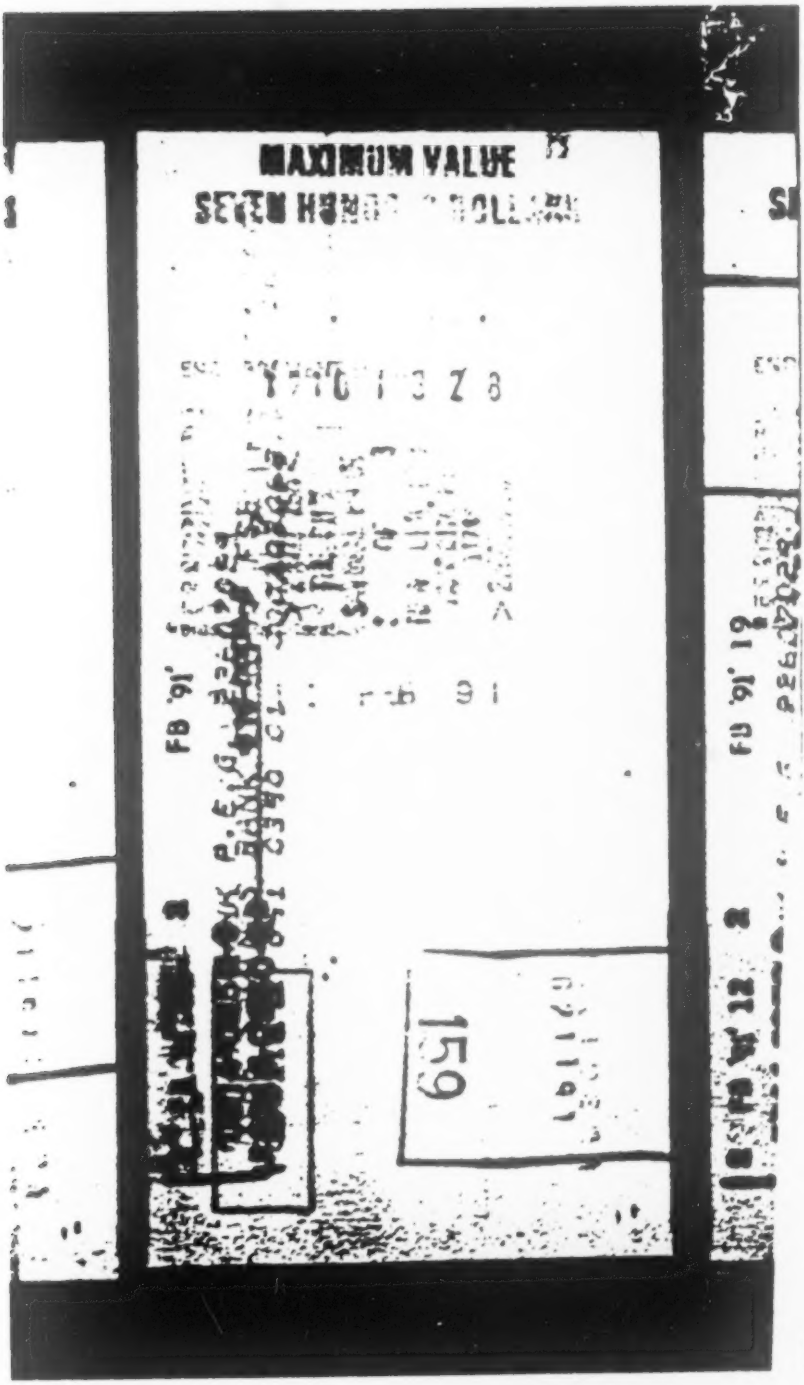
COD NO. OR USED FOR

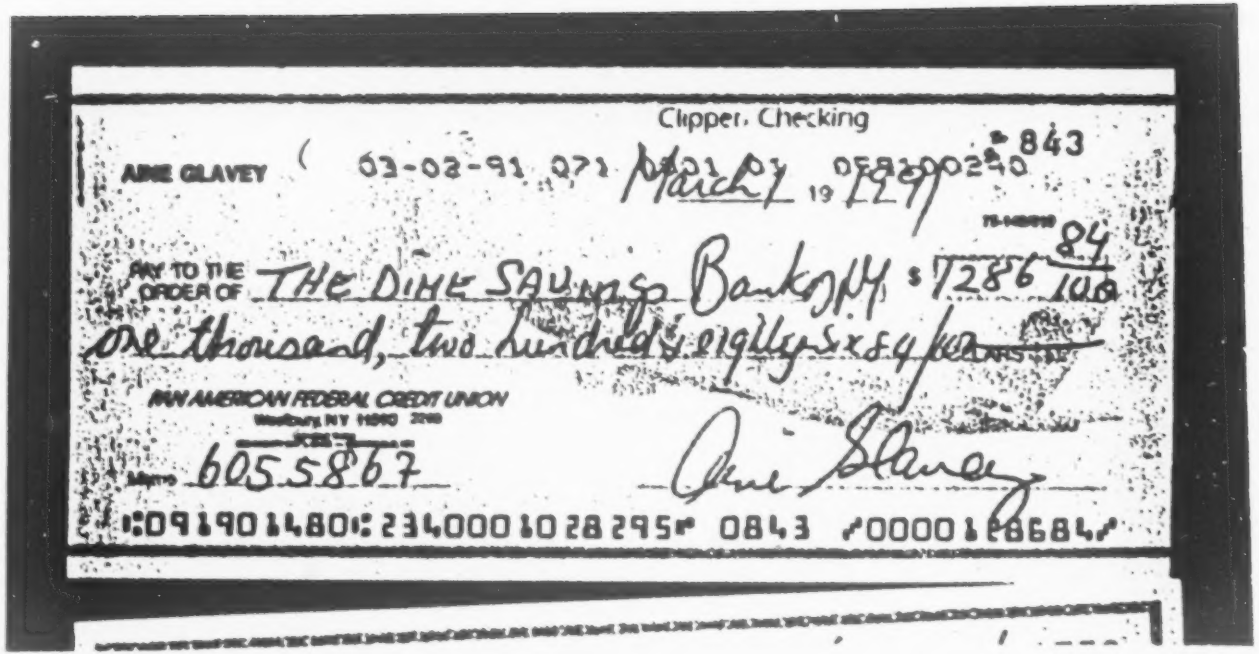
$405

This receipt is your guarantee of 100% refund if your money order is lost or stolen, provided you fill in the *Pay To* and *Purchaser* information on the money order in the space provided. No claim for improper payment permitted 2 years after payment.

If your money order is lost or stolen, present this receipt and file a claim for a refund at your Post Office.

A-1


MAXIMUM VALUE
159



Clipper Checking

ABIE GLAVEY (03-02-91 071 0421 03 0583002940 843

March 1 19 99

PAY TO THE ORDER OF THE DIME SAVINGS Bank of NY $ 7286 84/100

One thousand, two hundred eighty six & 84/100 DOLLARS

FAN AMERICAN FEDERAL CREDIT UNION
Woodbury, NY 11797

FOR 6055867

:021904480: 234000 10 28295 0843 0000 7286 84

19.85293
02 MAR 91

DIME.
THE DIME SAVINGS BANK

EAB PLAZA,
UNIONDALE , N.Y. 11556-0122

03/20/91

ANNE M GLAVEY
PO BOX 1514
NEW YORK NY 10009-8905

RE: ACCT 6055867
404-418 EAST 66TH ST.
APT.12A
NEW YORK, NY 10021

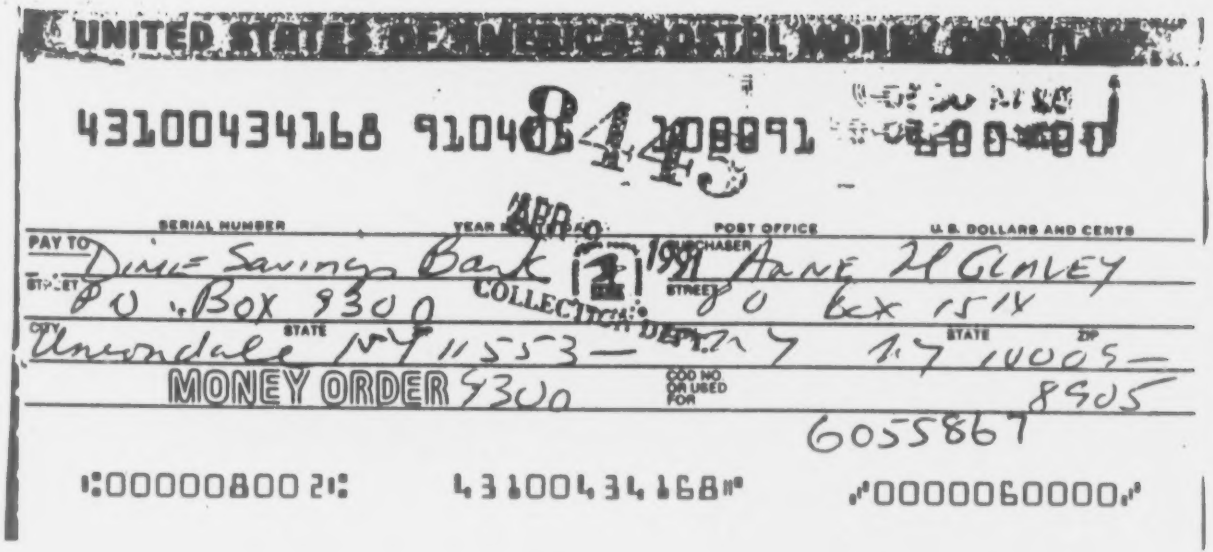
DEAR BORROWER:

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO REMIND YOU THAT ACCORDING TO YOUR COMMITMENT, A PAYMENT OF $$ 80.00 IS DUE IN THIS OFFICE OF 03/27/91.

IF YOU WISH TO DISCUSS THIS, PLEASE CONTACT ME IMMEDIATELY.

SINCERELY,

J. ONORIO
LOAN COLLECTOR I
(516) 745-2781



UNITED STATES OF AMERICA POSTAL MONEY ORDER

43100434168 9104 84 108891 [illegible]

SERIAL NUMBER | YEAR AND MONTH | POST OFFICE | U.S. DOLLARS AND CENTS

APR 2 1991

PAY TO: Dime Savings Bank COLLECTION DEPT. 2

PURCHASER: Anne M Conley

STREET: PO Box 9300 | STREET: PO Box 1514

CITY: Uniondale STATE: NY 11553- | STATE: NY ZIP: 11005-

MONEY ORDER $300 | COD NO. OR USED FOR: 8905

6055867

:00000800 2: 43100434168" "0000060000"

CUSTOMER'S RECEIPT

DO NOT SEND THIS RECEIPT FOR PAYMENT
KEEP IT FOR YOUR RECORDS

4310369250[illegible] 960506 [illegible] 581.64

SERIAL NUMBER YEAR MONTH DAY POST OFFICE U.S. DOLLARS AND CENTS

PAY TO Dime Savings Bank of NY

STREET P.O. Box 1500

CITY Valley Stream STATE NY ZIP 11583

PURCHASER Anne M Gravey

STREET P.O. Box [illegible]

CITY NY STATE NY ZIP 10005

COD NO OR USED FOR 890

CUSTOMER RECEIPT

May '96 6055867

This receipt is your guarantee of 100% refund if your money order is lost or stolen, provided you fill in the *Pay To* and *Purchaser* information on the money order in the space provided. No claim for improper payment permitted 2 years after payment.

If your money order is lost or stolen, present this receipt and file a claim for a refund at your Post Office.

M

CUSTOMER'S RECEIPT

DO NOT SEND THIS RECEIPT FOR PAYMENT
KEEP IT FOR YOUR RECORDS

4310369251 | 910506 100393 [illegible]

SERIAL NUMBER | YEAR MONTH DAY | POST OFFICE | U.S. DOLLARS AND CENTS

PAY TO: Dime Savings Bank of NY
STREET: P-O-Box 500 Valley St.
CITY: NY STATE: NY ZIP: 11582

PURCHASER: Anne M Clavey
STREET: [illegible] 1574
CITY: [illegible] STATE: NY ZIP: 1009-

COD NO. OR USED FOR: [illegible] $405

CUSTOMER RECEIPT

May 19 1605867

This receipt is your guarantee of 100% refund if your money order is lost or stolen, provided you fill in the *Pay To* and *Purchaser* information on the money order in the space provided. No claim for improper payment permitted 2 years after payment.

If your money order is lost or stolen, present this receipt and file a claim for a refund at your Post Office.

3486 Rev. 12/89 5/13/91 Mortgage No. 6055867

We are sorry, but we have to return your payment. Here is the reason we cannot accept it:

___ Not Payable To Us _____ Written amount Blank

___ Not Properly Endorsed _____ Insufficient Funds

___ Not Signed Please remit 3,624.21 certified funds

Please send us a corrected check as quickly as you can and enclose your payment coupon or ✓ notice so we can credit your mortgage account promptly.

Anne Glavey
P.O. Box 1514
New York, NY 10009-8905

Thank you very much.

DIME.
516-745-2781

Clipper Draft
6/10/1996 910
1-7813/2260
AINE GLAVEY
PAY TO THE ORDER OF Dime Savings Bank
$1286 84/100
one thousand, two hundred eighty six and 84/100 DOLLARS
PAN AMERICAN FEDERAL CREDIT UNION
HAUPPAUGE, NY 11788
MEMO June 6055867
⑆226076135⑆ 234000 10 28 295⑈ 0910

3486 Rev. 12/89 (516) 357-DIME Mortgage No. 605586-7
6/21/91

We are sorry, but we have to return your payment. Here is the reason we cannot accept it:

___	Not Payable To Us	_____	Written amount Blank
___	Not Properly Endorsed	_____	Insufficient Funds
___	Not Signed	✓	net total amount due of $4996.75

Please send us a corrected check as quickly as you can and enclose your payment coupon or this notice so we can credit your mortgage account promptly.

Anne Glavey
P.O. Box 1514
New York, NY 10009-8905

Bruce Levy (212) 944-1515

Thank you very much.

DIME.
Collection Dept.
800 333 8921
516 745 2781

Clipper Draft

AINE GLAVEY

July 4, 19 99/930

1-7613/2260

PAY TO THE ORDER OF Dime Savings Bank $ 1286 84/100

one thousand, two hundred eighty six DOLLARS

PAN AMERICAN FEDERAL CREDIT UNION
HAUPPAUGE, NY 11788

MEMO July 605867

⑆226076135⑆ 234000 10 28 295⑈ 0930

CERTIFIED MAIL: P.O. BOX 1514,

RETURN RECEIPT REQUESTED: NEW YORK,

N.Y. 10009-8905.

July 4, 1991.

The Dime Savings Bank of New York,
P.O. Box 1500 Valley Stream,
New York 11583.

Re: Loan No. 6055867

Dear Sir or Madam,

I am in receipt of your note and my returned cheque in payment of my June payment.

Too my knowledge, I have made all the payments thus far. I am enclosing my July payment, together with the June payment.

I have gone over my pa perwork and I am not aware of any deliquent payment.

Hope this is to your satisfaction.

Very truly yours,

/s/ Ann M. Glavey

Anne M. Glavey.

2 checques enclosed.

DIME.
THE DIME SAVINGS BANK
OF NEW YORK, FSB

EAB PLAZA,
UNIONDALE , N.Y. 11556-0122

DATE: -7/17/91

ANNE,M,GLAVEY
PO BOX 1514
NEW YORK NY 10009-8905

Re: Loan No. 6055867

Dear Borrowers:

You have recently sent us a partial payment of $1286.82 and check #910930, which we are unable to process at this time and which you will find enclosed in this letter.

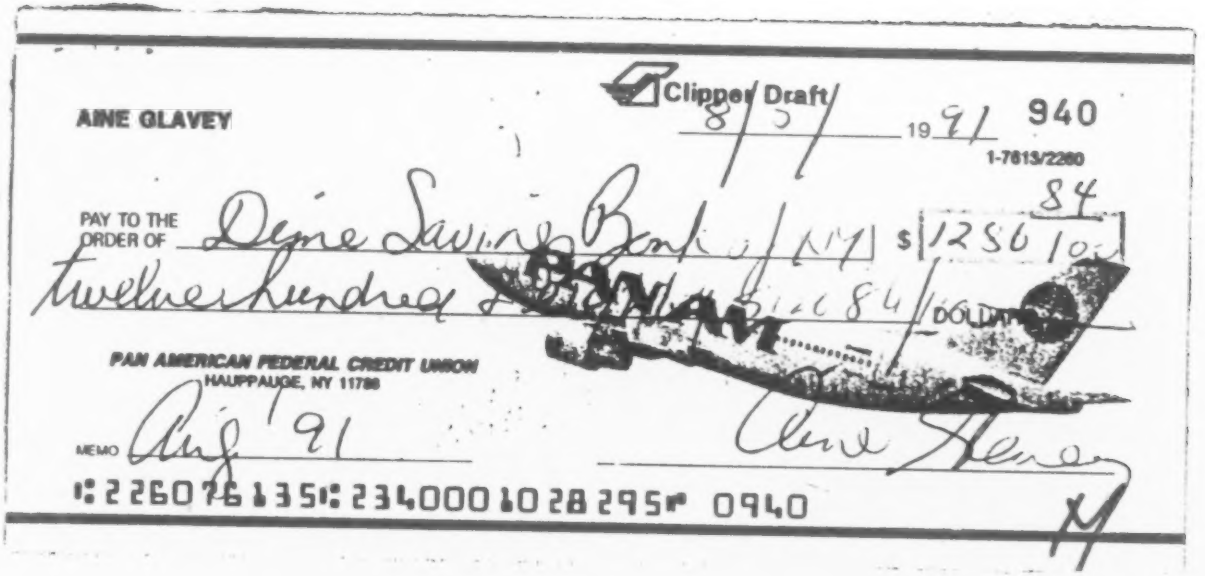
If extraordinary circumstances have prevented you from making your full mortgage payment, you should immediately contact the Bank's Customer Relations Unit. The Customer Relations Unit consists of specialists who are trained to deal with situations such as yours, and work with you to explore alternatives to foreclosure. We have a wide variety of plans available which could help you avoid losing your investment.

The sooner you contact us, the easier a solution will be, so please call me at (516) 745-2230 to discuss your case. I am available from 8:30 a.m. to 5:30 p.m.

We have a wide variety of payment plans and options available and have been able to help hundreds of borrowers. I'm sure one of our plans will be right for you. If it isn't, we can tailor plans to meet your specific needs. There just might be a way to keep you from losing your property, and The Dime would like to work it out for you.

Sincerely,

/s/ Susan Whelen



AINE GLAVEY

Clipper Draft

8/5 19 91 940

1-7813/2260

PAY TO THE ORDER OF Dime Savings Bank of NY $ 1256 84

twelve hundred fifty six 84/100 DOLLARS

PAN AMERICAN FEDERAL CREDIT UNION
HAUPPAUGE, NY 11788

MEMO Aug 91

Aine Glavey

⑆226076135⑆ 234000 10 28 295⑈ 0940

CERTIFIED MAIL: AINE GLAVEY,

RETURN RECEIPT REQUESTED: P.O. Box 1514,
New York,
N.Y. 10009-8905.

August 5, 1991.

Ms. Susan Whelan,
The Dime Savings Bank of N.Y.,
FSB - EAB Plaza,
Uniondale,
N.Y. 11556-0121.

Customer Relations Unit:

Re: Loan No. 6055867

Dear Ms. Whelan,

I am in receipt of your Work Sheet Application and do appreciate your concern in this matter and your interest in that I do not loose my property.

Obviously, I am just as concerned in my own investment interest. I was rather upset when the Dime returned my June and July payment. As per our telephone conversation and to my knowledge, I have paid each monthly payment. I have been in touch with the Bank many times and I am not aware of any months in deliquency.

You asked me to send you copies of the cheques for each month, starting in January, 1991. I am enclosing a copy of a Money order for January, a money order which states "Bal Feb Mortg." Obviously, I must have paid the February, as this is the balance, which the Dime requested. However, I am checking with the Post Office for the actual payment itself. There is also a Money Order for March, a copy of a cheque sent to you for April, a Money Order for May and then of course the two cheques which were returned to me for June and July.

I am enclosing another cheque for August, Would you kindly accept June, July and August payments and cash the cheques. I am further looking into my account to learn of any deliquent monthly payment. I would also appreciate if you would inform me, of when the alleged discrepancies occured.

Awaiting to hear from you.

Very truly yours,

/s/ Anne M. Glavey

Anne M. Glavey.

Enclosures:

DIME-GRAM

Date August 30, 1991

A.M. GLAVEY

P.O. BOX 1514

NEW YORK N.Y.
10009-8905

CALL: CUSTOMER SERVICE
WITHIN NEW YORK STATE
351-3463

OUTSIDE NEW YORK STATE
1-800-548-3313

or WRITE: CUSTOMER SERVICE
P.O. BOX 9300
UNIONDALE, N.Y. 11556-0122

Mortgage No. 6055867

As stated in our telephone conversation yesterday, I am returning the 3 checks numbered 940, 930 & 910 as they cannot be accepted, because your loan is in foreclosure.

I am returning the application package should you decide to complete it.

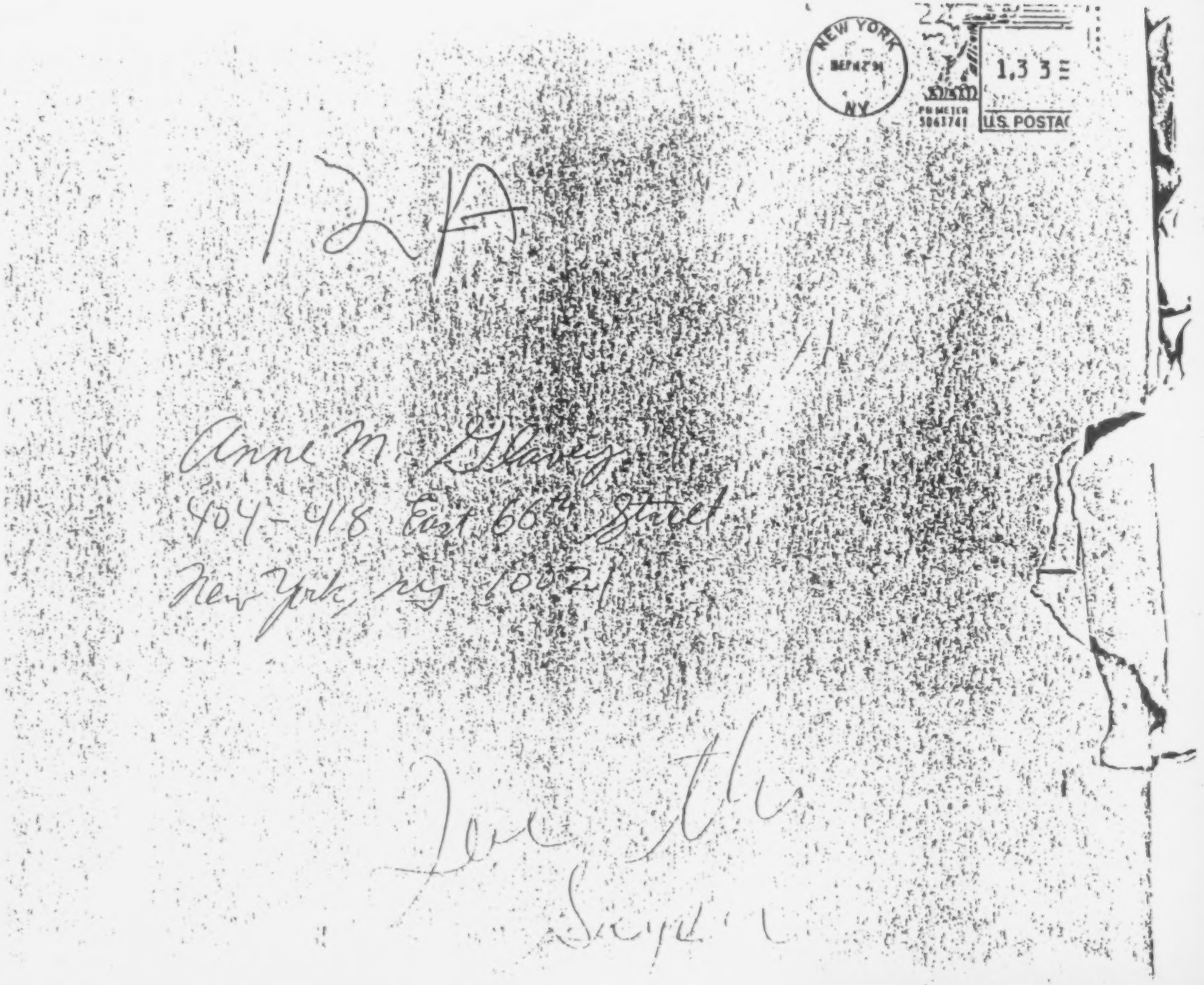
I am also arranging for a coy of the investigation to be mailed to you.

Sincerely,

/s/ Susan Whelan
(516) 745-2230
(1) 800 TRY-DIME

DIME.
THE DIME SAVINGS BANK OF NEW YORK

FSB **MEMBER FDIC**


NEW YORK
NY
1,3 3
U.S. POSTA
12A
Anne M. Glavey
404-418 East 66th Street
New York, NY 10021